IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8826 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOK @ ASHOK GETI SAVALADAS KHIMANI (SINDHI)

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

Mr.Uday Bhatt AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 02/12/2000

ORAL JUDGEMENT

#. The petitioner has challenged the detention order passed by the Police Commissioner , Ahmedabad City , Ahmedabad under the provisions of Gujarat Prevention of Anti-social Activities Act 1985 (PASA Act for short) in exercise of the powers conferred upon him under section

3(1) of the PASA Act. The order came to be passed on 29.7.2000. The petitioner was detained from 30.7.2000.

#. The grounds of detention reveal that a crime was registered against the petitioner on 25.7.2000 under the Prohibition Act under sections 66-B,65-A and 81. The detaining authority has taken into consideration the investigation in this case. In addition , the detaining authority has also taken into consideration the statements of two witnesses who on assurance of secrecy of identity offered their statements to the extent that the petition was a hardened criminal and a head strong man and was indulging in selling of illegal liquor. Due to fear of the petitioner according to the detaining uthority, nobody came forward to file any complaint or offer statements against him . From the above material the detaining authority came to the conclusion that the petitioner was a bootlegger within the meaning of section 2(c) of the PASA Act.

#. Learned advocate Mr. A.S.Dave for the petitioner and Mr. Uday Bhatt learned AGP for the respondents were heard at length.

#. The order of detention came to be challenged on various grounds. One of the grounds is that the order of detention is vitiated by non application of mind because the detaining authority failed to consider less drastic remedy available to the petitioner.

#. Zubedabibi Rasidkhan Pathan vs. State of Gujarat reported in 1995(2) GLR 1134 the Division Bench of thus Court has observed that provisions under section 437(5) of Cr.P.C. for cancellation of bail are far more wide in import and intent. The court observed that the detaining authority did not consider to resort to the provision of cancellation of bail. The detention order was set aside on this ground. This view was again fortified by this court in a bench decision in L.P.A. No.1056 of 1999 in the case of Yunusbhai Hasanbhai Chanchi vs. District Magistrate decided on 15.9.1999. Placing reliance upon the above established law, reverting back to the facts of this case it appears from the grounds of detention that at the time of serving of the order of detention, the petitioner was in police custody. It is observed by the detaining authority that on producing before the court the petitioner was likely to be released on bail by the competent court and was likely to indulge in the illegal activity of selling the liquor manufactured illegally. It is also observed by the detaining authority that the remedy available under section 437(5) of Cr.P.C. was

contemplated but the procedure was likely to consume more time and therefore, it was not resorted to. From these observations of the detaining authority it is clear that this is a case clearly of non application of mind by the detaining authority. In fact the petitioner was in police remand at the time of passing the order of detention. The detaining authority had an opportunity to oppose the bail if at all preferred by the petitioner which was not resorted to. Instead the detaining authority simply brushed aside the less drastic remedy available by merely saying that the procedure for cancellation of bail was likely to take time. Firstly the detaining authority anticipated that the petitioner was likely to be released on bail and secondly the detaining authority wrongly considered that the remedy under section 437(5) was not sufficient to prevent the activities of the petitioner forthwith. Even without resorting to the said remedy the detaining authority observed that the same was likely to consume more time. Therefore, it clearly emerges that there is total non application of mind by the detaining authority to the facts of the case and the legal position. The detention order is therefore, vitiated and required to be set aside.

#. In this view of the matter the detention order passed by the Police Commissioner, Ahmedabad City on 29.7.2000 under the PASA Act against the petitioner is hereby ordered to be set aside and quashed. The petitioner Ashok alias Ashok Geti Savaldas Khimani (Sindhi) is hereby ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute. D.S. permitted.

(J.R.Vora.J)

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